

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Judgment Creditor,

v.

JAMES SPINA,¹

Judgment Debtor,

MAELIEN SPINA, AND EFFECTIVE
MARKETING & COMMUNICATIONS, LLC,

Joined Relief Defendants,

and

SECURITIES AMERICA, FS INVESTMENTS,
JACKSON, AND INLAND TRUST,

Garnishees.

18 CR 625 (KMK)

**FINAL ORDER
OF GARNISHMENT**

WHEREAS the Court entered judgment against the judgment debtor, JAMES SPINA, on April 13, 2021, in the amount of \$9,760,655.20;

WHEREAS, as of July 1, 2023, JAMES SPINA has made payments totaling \$791, and the outstanding restitution balance owed to the victims of his crime is \$9,769,959;

WHEREAS, pursuant to 18 U.S.C. § 3613, notwithstanding any other federal or state law, the restitution order is a lien on all of JAMES SPINA's property and rights to property;

¹ Individually and in his capacity as Registered Agent for and Managing Member of Effective Marketing & Communications, LLC.

WHEREAS, pursuant to the Federal Debt Collection Procedure Act, ("FDCPA"), 28 U.S.C. § 3205, the Government sought, obtained, and served writs of garnishment upon the garnishees for substantial nonexempt property belonging to or due JAMES SPINA;

WHEREAS the Government served the judgment debtor and his former spouse, MAELIEN SPINA, with the garnishment process, including the exclusive and limited exemptions available to criminal judgment debtors under 18 U.S.C. § 3613;

WHEREAS garnishee SECURITIES AMERICA answered the writ stating that it holds four accounts belonging to or due JAMES SPINA, in the following amounts subject to market fluctuation: \$363,983 in SEP IRA number ending in 7767; \$3,117,290 in Plan Participant account number ending in 6693; \$595,235 in account number ending in 3840; and \$786,218 in Plan Participant account number ending in 6685 in the name of Effective Marketing & Communications, LLC ("EMC");

WHEREAS garnishee FS INVESTMENTS answered the writ stating that it holds \$98,250, subject to market fluctuation, in a brokerage account number ending in 0041 in the name of EMC;

WHEREAS the sole managers and members of EMC are JAMES SPINA and MAELIEN SPINA and EMC is a defunct entity;

WHEREAS garnishee INLAND REAL ESTATE INVESTMENT CORPORATION ("INLAND TRUST") answered that it held a trust account number ending in 0173 that JAMES SPINA transferred to MAELIEN SPINA;

WHEREAS garnishee JACKSON answered that it holds \$596,220 in an annuity account number ending in 9295 in the name of MAELIEN SPINA;

WHEREAS it is undisputed that JAMES SPINA has or had a substantial nonexempt interest in the funds held by the garnishees such that these funds are subject to garnishment pursuant to 18 U.S.C. § 3613, and 28 U.S.C. § 3205;

WHEREAS the Government filed a motion seeking a declaratory judgment to void certain transfers from JAMES SPINA to MAELIEN SPINA as fraudulent, a charging order against EMC, and a final order of garnishment directing the garnishees to submit the full liquidated value of the judgment debtor's interest in the withheld accounts to the Clerk of Court in partial satisfaction of the outstanding restitution owed to the victims of JAMES SPINA's crime;

WHEREAS the Court held a hearing on May 30, 2023 and directed the parties to reach a resolution of the pending motion;

WHEREAS the parties have since agreed to apply the full liquidated value of each account held by the garnishees to the criminal judgment debt with the sole exception of \$160,000 from the SECURITIES AMERICA account number ending in 6693, which shall be released to MAELIEN SPINA;

WHEREAS in exchange for MAELIEN SPINA relinquishing all claims to the remaining funds held by the garnishees, the Government agrees to forgo any fraudulent transfer action and attachment of the 18 U.S.C. § 3613 lien to the real property located at 565 Midland Lake Road, Middletown, New York 10941 and 313 Eldridge Street, Clearwater, Florida 33775, such that MAELIEN SPINA retains ownership of each of those parcels free and clear from any interest arising in this case;

WHEREAS to avoid the Government filing a fraudulent transfer action regarding the real property located at 9 Turner Street, No. 13, Clearwater, Florida 33756, MAELIEN SPINA acknowledges that JAMES SPINA has one-half interest in it, to which the 18 U.S.C. § 3613 lien

attaches, provided that the Government will not execute upon or foreclose the lien but may only receive payment from the net proceeds of any future refinance or sale of that property if the restitution debt has not been satisfied;

IT IS HEREBY ORDERED that garnishee SECURITIES AMERICA shall liquidate securities in the SEP IRA number ending in 7767 and the Plan Participant account number ending in 6693 and the Brokerage account number ending in 3840 and the Plan Participant account number ending in 6685, less any deductions required by law, with no withdrawal penalty, as needed to remit the sum of \$160,000 to MAELIEN SPINA and pay the remaining proceeds to the Clerk of Court. *See* 18 U.S.C. § 3613; *United States v. Irving*, 4452 F.3d 110, 126 (2d Cir. 2006) (the Government is authorized to garnish retirement funds to satisfy a criminal debt); and *United States v. Novak*, 476 F.3d 1041, 1062 (9th Cir. 2006) (involuntary court-ordered distributions from retirement accounts to pay criminal judgments are not subject to additional tax or penalty for early withdrawal);

IT IS FURTHER ORDERED that garnishee FS INVESTMENTS shall liquidate securities in the EMC account number ending in 0041 as needed to submit the full liquidated value, less any deductions required by law, with no withdrawal penalty, to the Clerk of Court;

IT IS FURTHER ORDERED that garnishee INLAND TRUST shall liquidate assets held in account number ending in 0173 as needed to submit the full liquidated value, less any deductions required by law, to the Clerk of Court;

IT IS FURTHER ORDERED that garnishee JACKSON shall liquidate securities in the annuity account number ending in 9295 as needed to submit the full liquidated value, less any deductions required by law, to the Clerk of Court; and

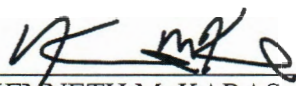
Payments should be made by cashier's check, money order, or certified funds to "Clerk of Court" with "No. 18 CR 625-1" written on the face of each payment and mailed to the United States District Court, 500 Pearl Street, Room 120, New York, New York 10007, Attn: Cashier.

SO ORDERED.

March 4, 2024

Date: ~~July~~, ~~2023~~

White Plains, New York



KENNETH M. KARAS
United States District Judge